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CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5073

62nd Legislature
2011 Regular Session

Passed by the Senate April 21, 2011
YEAS 27 NAYS 21

President of the Senate

Passed by the House April 11, 2011
YEAS 54 NAYS 43

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5073** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

1 (c) Health care professionals may authorize the medical use of
2 cannabis in the manner provided by this act without fear of state
3 criminal or civil sanctions.

4 (2) This act is not intended to amend or supersede Washington state
5 law prohibiting the acquisition, possession, manufacture, sale, or use
6 of cannabis for nonmedical purposes.

7 (3) This act is not intended to compromise community safety.
8 State, county, or city correctional agencies or departments shall
9 retain the authority to establish and enforce terms for those on active
10 supervision.

11 **Sec. 102.** RCW 69.51A.005 and 2010 c 284 s 1 are each amended to
12 read as follows:

13 (1) The ~~((people of Washington state)) legislature finds that:~~

14 (a) There is medical evidence that some patients with terminal or
15 debilitating ~~((illnesses)) medical conditions may,~~ under their health
16 care professional's care, ~~((may)) benefit from the medical use of~~
17 ~~((marijuana)) cannabis.~~ Some of the ~~((illnesses)) conditions~~ for which
18 ~~((marijuana)) cannabis~~ appears to be beneficial include ~~((chemotherapy-~~
19 related)), but are not limited to:

20 (i) Nausea ~~((and)), vomiting ~~((in cancer patients; AIDS wasting~~~~
21 ~~syndrome)), and cachexia associated with cancer, HIV-positive status,~~
22 AIDS, hepatitis C, anorexia, and their treatments;

23 (ii) Severe muscle spasms associated with multiple sclerosis,
24 epilepsy, and other seizure and spasticity disorders; ~~((epilepsy;))~~

25 (iii) Acute or chronic glaucoma;

26 (iv) Crohn's disease; and

27 (v) Some forms of intractable pain.

28 ~~((The people find that)) (b) Humanitarian compassion necessitates~~
29 ~~that the decision to ~~((authorize the medical)) use ~~((of marijuana))~~~~
30 cannabis by patients with terminal or debilitating ~~((illnesses))~~
31 medical conditions is a personal, individual decision, based upon their
32 health care professional's professional medical judgment and
33 discretion.~~

34 (2) Therefore, the ~~((people of the state of Washington))~~
35 legislature intends that:

36 (a) Qualifying patients with terminal or debilitating ~~((illnesses))~~
37 medical conditions who, in the judgment of their health care

1 professionals, may benefit from the medical use of ((marijuana))
2 cannabis, shall not be ((found guilty of a crime under state law for
3 their possession and limited use of marijuana)) arrested, prosecuted,
4 or subject to other criminal sanctions or civil consequences under
5 state law based solely on their medical use of cannabis,
6 notwithstanding any other provision of law;

7 (b) Persons who act as designated providers to such patients shall
8 also not be ((found guilty of a crime under state law for)) arrested,
9 prosecuted, or subject to other criminal sanctions or civil
10 consequences under state law, notwithstanding any other provision of
11 law, based solely on their assisting with the medical use of
12 ((marijuana)) cannabis; and

13 (c) Health care professionals shall also ((be excepted from
14 liability and prosecution)) not be arrested, prosecuted, or subject to
15 other criminal sanctions or civil consequences under state law for the
16 proper authorization of ((marijuana)) medical use ((to)) of cannabis by
17 qualifying patients for whom, in the health care professional's
18 professional judgment, the medical ((marijuana)) use of cannabis may
19 prove beneficial.

20 (3) Nothing in this chapter establishes the medical necessity or
21 medical appropriateness of cannabis for treating terminal or
22 debilitating medical conditions as defined in RCW 69.51A.010.

23 (4) Nothing in this chapter diminishes the authority of
24 correctional agencies and departments, including local governments or
25 jails, to establish a procedure for determining when the use of
26 cannabis would impact community safety or the effective supervision of
27 those on active supervision for a criminal conviction, nor does it
28 create the right to any accommodation of any medical use of cannabis in
29 any correctional facility or jail.

30 **Sec. 103.** RCW 69.51A.020 and 1999 c 2 s 3 are each amended to read
31 as follows:

32 Nothing in this chapter shall be construed to supersede Washington
33 state law prohibiting the acquisition, possession, manufacture, sale,
34 or use of ((marijuana)) cannabis for nonmedical purposes. Criminal
35 penalties created under this act do not preclude the prosecution or
36 punishment for other crimes, including other crimes involving the
37 manufacture or delivery of cannabis for nonmedical purposes.

PART II
DEFINITIONS

Sec. 201. RCW 69.51A.010 and 2010 c 284 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cannabis" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this chapter, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

(2) "Cannabis analysis laboratory" means a laboratory that performs chemical analysis and inspection of cannabis samples.

(3) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this chapter and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

(4) "Correctional facility" has the same meaning as provided in RCW 72.09.015.

(5) "Corrections agency or department" means any agency or department in the state of Washington, including local governments or jails, that is vested with the responsibility to manage those individuals who are being supervised in the community for a criminal conviction and has established a written policy for determining when the medical use of cannabis, including possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

1 (6) "Designated provider" means a person who:

2 (a) Is eighteen years of age or older;

3 (b) Has been designated in ~~((writing))~~ a written document signed
4 and dated by a qualifying patient to serve as a designated provider
5 under this chapter; and

6 (c) Is ~~((prohibited from consuming marijuana obtained for the~~
7 ~~personal, medical use of the patient for whom the individual is acting~~
8 ~~as designated provider; and~~

9 ~~(d) Is the designated provider to only one patient at any one time.~~

10 ~~(2))~~ in compliance with the terms and conditions set forth in RCW
11 69.51A.040.

12 A qualifying patient may be the designated provider for another
13 qualifying patient and be in possession of both patients' cannabis at
14 the same time.

15 (7) "Director" means the director of the department of agriculture.

16 (8) "Dispense" means the selection, measuring, packaging, labeling,
17 delivery, or retail sale of cannabis by a licensed dispenser to a
18 qualifying patient or designated provider.

19 (9) "Health care professional," for purposes of this chapter only,
20 means a physician licensed under chapter 18.71 RCW, a physician
21 assistant licensed under chapter 18.71A RCW, an osteopathic physician
22 licensed under chapter 18.57 RCW, an osteopathic physicians' assistant
23 licensed under chapter 18.57A RCW, a naturopath licensed under chapter
24 18.36A RCW, or an advanced registered nurse practitioner licensed under
25 chapter 18.79 RCW.

26 ~~((3))~~ (10) "Jail" has the same meaning as provided in RCW
27 70.48.020.

28 (11) "Labeling" means all labels and other written, printed, or
29 graphic matter (a) upon any cannabis intended for medical use, or (b)
30 accompanying such cannabis.

31 (12) "Licensed dispenser" means a person licensed to dispense
32 cannabis for medical use to qualifying patients and designated
33 providers by the department of health in accordance with rules adopted
34 by the department of health pursuant to the terms of this chapter.

35 (13) "Licensed processor of cannabis products" means a person
36 licensed by the department of agriculture to manufacture, process,
37 handle, and label cannabis products for wholesale to licensed
38 dispensers.

1 (14) "Licensed producer" means a person licensed by the department
2 of agriculture to produce cannabis for medical use for wholesale to
3 licensed dispensers and licensed processors of cannabis products in
4 accordance with rules adopted by the department of agriculture pursuant
5 to the terms of this chapter.

6 (15) "Medical use of ((~~marijuana~~)) cannabis" means the manufacture,
7 production, processing, possession, transportation, delivery,
8 dispensing, ingestion, application, or administration of ((~~marijuana,~~
9 as defined in RCW 69.50.101(q),)) cannabis for the exclusive benefit of
10 a qualifying patient in the treatment of his or her terminal or
11 debilitating ((~~illness~~)) medical condition.

12 ((+4)) (16) "Nonresident" means a person who is temporarily in the
13 state but is not a Washington state resident.

14 (17) "Peace officer" means any law enforcement personnel as defined
15 in RCW 43.101.010.

16 (18) "Person" means an individual or an entity.

17 (19) "Personally identifiable information" means any information
18 that includes, but is not limited to, data that uniquely identify,
19 distinguish, or trace a person's identity, such as the person's name,
20 date of birth, or address, either alone or when combined with other
21 sources, that establish the person is a qualifying patient, designated
22 provider, licensed producer, or licensed processor of cannabis products
23 for purposes of registration with the department of health or
24 department of agriculture. The term "personally identifiable
25 information" also means any information used by the department of
26 health or department of agriculture to identify a person as a
27 qualifying patient, designated provider, licensed producer, or licensed
28 processor of cannabis products.

29 (20) "Plant" means an organism having at least three
30 distinguishable and distinct leaves, each leaf being at least three
31 centimeters in diameter, and a readily observable root formation
32 consisting of at least two separate and distinct roots, each being at
33 least two centimeters in length. Multiple stalks emanating from the
34 same root ball or root system shall be considered part of the same
35 single plant.

36 (21) "Process" means to handle or process cannabis in preparation
37 for medical use.

1 (22) "Processing facility" means the premises and equipment where
2 cannabis products are manufactured, processed, handled, and labeled for
3 wholesale to licensed dispensers.

4 (23) "Produce" means to plant, grow, or harvest cannabis for
5 medical use.

6 (24) "Production facility" means the premises and equipment where
7 cannabis is planted, grown, harvested, processed, stored, handled,
8 packaged, or labeled by a licensed producer for wholesale, delivery, or
9 transportation to a licensed dispenser or licensed processor of
10 cannabis products, and all vehicles and equipment used to transport
11 cannabis from a licensed producer to a licensed dispenser or licensed
12 processor of cannabis products.

13 (25) "Public place" includes streets and alleys of incorporated
14 cities and towns; state or county or township highways or roads;
15 buildings and grounds used for school purposes; public dance halls and
16 grounds adjacent thereto; premises where goods and services are offered
17 to the public for retail sale; public buildings, public meeting halls,
18 lobbies, halls and dining rooms of hotels, restaurants, theatres,
19 stores, garages, and filling stations which are open to and are
20 generally used by the public and to which the public is permitted to
21 have unrestricted access; railroad trains, stages, buses, ferries, and
22 other public conveyances of all kinds and character, and the depots,
23 stops, and waiting rooms used in conjunction therewith which are open
24 to unrestricted use and access by the public; publicly owned bathing
25 beaches, parks, or playgrounds; and all other places of like or similar
26 nature to which the general public has unrestricted right of access,
27 and which are generally used by the public.

28 (26) "Qualifying patient" means a person who:

29 (a)(i) Is a patient of a health care professional;

30 ~~((b))~~ (ii) Has been diagnosed by that health care professional as
31 having a terminal or debilitating medical condition;

32 ~~((c))~~ (iii) Is a resident of the state of Washington at the time
33 of such diagnosis;

34 ~~((d))~~ (iv) Has been advised by that health care professional
35 about the risks and benefits of the medical use of ((marijuana))
36 cannabis; ((and

37 ~~((e))~~ (v) Has been advised by that health care professional that

1 (~~(they)~~) he or she may benefit from the medical use of (~~(marijuana)~~)
2 cannabis; and

3 (vi) Is otherwise in compliance with the terms and conditions
4 established in this chapter.

5 (b) The term "qualifying patient" does not include a person who is
6 actively being supervised for a criminal conviction by a corrections
7 agency or department that has determined that the terms of this chapter
8 are inconsistent with and contrary to his or her supervision and all
9 related processes and procedures related to that supervision.

10 (~~(+5)~~) (27) "Secretary" means the secretary of health.

11 (28) "Tamper-resistant paper" means paper that meets one or more of
12 the following industry-recognized features:

13 (a) One or more features designed to prevent copying of the paper;
14 (b) One or more features designed to prevent the erasure or
15 modification of information on the paper; or
16 (c) One or more features designed to prevent the use of counterfeit
17 valid documentation.

18 (~~(+6)~~) (29) "Terminal or debilitating medical condition" means:

19 (a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis,
20 epilepsy or other seizure disorder, or spasticity disorders; or
21 (b) Intractable pain, limited for the purpose of this chapter to
22 mean pain unrelieved by standard medical treatments and medications; or
23 (c) Glaucoma, either acute or chronic, limited for the purpose of
24 this chapter to mean increased intraocular pressure unrelieved by
25 standard treatments and medications; or
26 (d) Crohn's disease with debilitating symptoms unrelieved by
27 standard treatments or medications; or
28 (e) Hepatitis C with debilitating nausea or intractable pain
29 unrelieved by standard treatments or medications; or
30 (f) Diseases, including anorexia, which result in nausea, vomiting,
31 (~~(wasting)~~) cachexia, appetite loss, cramping, seizures, muscle spasms,
32 or spasticity, when these symptoms are unrelieved by standard
33 treatments or medications; or
34 (g) Any other medical condition duly approved by the Washington
35 state medical quality assurance commission in consultation with the
36 board of osteopathic medicine and surgery as directed in this chapter.

37 (~~(+7)~~) (30) "THC concentration" means percent of

1 tetrahydrocannabinol content per weight or volume of useable cannabis
2 or cannabis product.

3 (31) "Useable cannabis" means dried flowers of the Cannabis plant
4 having a THC concentration greater than three-tenths of one percent.
5 Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For
6 purposes of this subsection, "dried" means containing less than fifteen
7 percent moisture content by weight. The term "useable cannabis" does
8 not include cannabis products.

9 (32)(a) Until January 1, 2013, "valid documentation" means:

10 ~~((a))~~ (i) A statement signed and dated by a qualifying patient's
11 health care professional written on tamper-resistant paper, which
12 states that, in the health care professional's professional opinion,
13 the patient may benefit from the medical use of ~~((marijuana)) cannabis;~~
14 ~~((and~~

15 ~~(b))~~ (ii) Proof of identity such as a Washington state driver's
16 license or identicard, as defined in RCW 46.20.035; and

17 (iii) In the case of a designated provider, the signed and dated
18 document valid for one year from the date of signature executed by the
19 qualifying patient who has designated the provider; and

20 (b) Beginning July 1, 2012, "valid documentation" means:

21 (i) An original statement signed and dated by a qualifying
22 patient's health care professional written on tamper-resistant paper
23 and valid for up to one year from the date of the health care
24 professional's signature, which states that, in the health care
25 professional's professional opinion, the patient may benefit from the
26 medical use of cannabis;

27 (ii) Proof of identity such as a Washington state driver's license
28 or identicard, as defined in RCW 46.20.035; and

29 (iii) In the case of a designated provider, the signed and dated
30 document valid for up to one year from the date of signature executed
31 by the qualifying patient who has designated the provider.

32 **PART III**
33 **PROTECTIONS FOR HEALTH CARE PROFESSIONALS**

34 **Sec. 301.** RCW 69.51A.030 and 2010 c 284 s 3 are each amended to
35 read as follows:

36 ~~((A health care professional shall be excepted from the state's~~

1 ~~criminal laws and shall not be penalized in any manner, or denied any~~
2 ~~right or privilege, for))~~ (1) The following acts do not constitute
3 crimes under state law or unprofessional conduct under chapter 18.130
4 RCW, and a health care professional may not be arrested, searched,
5 prosecuted, disciplined, or subject to other criminal sanctions or
6 civil consequences or liability under state law, or have real or
7 personal property searched, seized, or forfeited pursuant to state law,
8 notwithstanding any other provision of law as long as the health care
9 professional complies with subsection (2) of this section:

10 ~~((+1))~~ (a) Advising a ~~((qualifying))~~ patient about the risks and
11 benefits of medical use of ~~((marijuana))~~ cannabis or that the
12 ~~((qualifying))~~ patient may benefit from the medical use of ~~((marijuana~~
13 ~~where such use is within a professional standard of care or in the~~
14 ~~individual health care professional's medical judgment))~~ cannabis; or

15 ~~((+2))~~ (b) Providing a ~~((qualifying))~~ patient meeting the criteria
16 established under RCW 69.51A.010(26) with valid documentation, based
17 upon the health care professional's assessment of the ~~((qualifying))~~
18 patient's medical history and current medical condition, ~~((that the~~
19 ~~medical use of marijuana may benefit a particular qualifying patient))~~
20 where such use is within a professional standard of care or in the
21 individual health care professional's medical judgment.

22 (2)(a) A health care professional may only provide a patient with
23 valid documentation authorizing the medical use of cannabis or register
24 the patient with the registry established in section 901 of this act if
25 he or she has a newly initiated or existing documented relationship
26 with the patient, as a primary care provider or a specialist, relating
27 to the diagnosis and ongoing treatment or monitoring of the patient's
28 terminal or debilitating medical condition, and only after:

29 (i) Completing a physical examination of the patient as
30 appropriate, based on the patient's condition and age;

31 (ii) Documenting the terminal or debilitating medical condition of
32 the patient in the patient's medical record and that the patient may
33 benefit from treatment of this condition or its symptoms with medical
34 use of cannabis;

35 (iii) Informing the patient of other options for treating the
36 terminal or debilitating medical condition; and

37 (iv) Documenting other measures attempted to treat the terminal or

1 debilitating medical condition that do not involve the medical use of
2 cannabis.

3 (b) A health care professional shall not:

4 (i) Accept, solicit, or offer any form of pecuniary remuneration
5 from or to a licensed dispenser, licensed producer, or licensed
6 processor of cannabis products;

7 (ii) Offer a discount or any other thing of value to a qualifying
8 patient who is a customer of, or agrees to be a customer of, a
9 particular licensed dispenser, licensed producer, or licensed processor
10 of cannabis products;

11 (iii) Examine or offer to examine a patient for purposes of
12 diagnosing a terminal or debilitating medical condition at a location
13 where cannabis is produced, processed, or dispensed;

14 (iv) Have a business or practice which consists solely of
15 authorizing the medical use of cannabis;

16 (v) Include any statement or reference, visual or otherwise, on the
17 medical use of cannabis in any advertisement for his or her business or
18 practice; or

19 (vi) Hold an economic interest in an enterprise that produces,
20 processes, or dispenses cannabis if the health care professional
21 authorizes the medical use of cannabis.

22 (3) A violation of any provision of subsection (2) of this section
23 constitutes unprofessional conduct under chapter 18.130 RCW.

24 **PART IV**

25 **PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS**

26 **Sec. 401.** RCW 69.51A.040 and 2007 c 371 s 5 are each amended to
27 read as follows:

28 ~~((1) If a law enforcement officer determines that marijuana is~~
29 ~~being possessed lawfully under the medical marijuana law, the officer~~
30 ~~may document the amount of marijuana, take a representative sample that~~
31 ~~is large enough to test, but not seize the marijuana. A law~~
32 ~~enforcement officer or agency shall not be held civilly liable for~~
33 ~~failure to seize marijuana in this circumstance.~~

34 ~~(2) If charged with a violation of state law relating to marijuana,~~
35 ~~any qualifying patient who is engaged in the medical use of marijuana,~~
36 ~~or any designated provider who assists a qualifying patient in the~~

1 ~~medical use of marijuana, will be deemed to have established an~~
2 ~~affirmative defense to such charges by proof of his or her compliance~~
3 ~~with the requirements provided in this chapter. Any person meeting the~~
4 ~~requirements appropriate to his or her status under this chapter shall~~
5 ~~be considered to have engaged in activities permitted by this chapter~~
6 ~~and shall not be penalized in any manner, or denied any right or~~
7 ~~privilege, for such actions.~~

8 ~~(3) A qualifying patient, if eighteen years of age or older, or a~~
9 ~~designated provider shall:~~

10 ~~(a) Meet all criteria for status as a qualifying patient or~~
11 ~~designated provider;~~

12 ~~(b) Possess no more marijuana than is necessary for the patient's~~
13 ~~personal, medical use, not exceeding the amount necessary for a sixty-~~
14 ~~day supply; and~~

15 ~~(c) Present his or her valid documentation to any law enforcement~~
16 ~~official who questions the patient or provider regarding his or her~~
17 ~~medical use of marijuana.~~

18 ~~(4) A qualifying patient, if under eighteen years of age at the~~
19 ~~time he or she is alleged to have committed the offense, shall~~
20 ~~demonstrate compliance with subsection (3)(a) and (c) of this section.~~
21 ~~However, any possession under subsection (3)(b) of this section, as~~
22 ~~well as any production, acquisition, and decision as to dosage and~~
23 ~~frequency of use, shall be the responsibility of the parent or legal~~
24 ~~guardian of the qualifying patient.)) The medical use of cannabis in~~
25 ~~accordance with the terms and conditions of this chapter does not~~
26 ~~constitute a crime and a qualifying patient or designated provider in~~
27 ~~compliance with the terms and conditions of this chapter may not be~~
28 ~~arrested, prosecuted, or subject to other criminal sanctions or civil~~
29 ~~consequences, for possession, manufacture, or delivery of, or for~~
30 ~~possession with intent to manufacture or deliver, cannabis under state~~
31 ~~law, or have real or personal property seized or forfeited for~~
32 ~~possession, manufacture, or delivery of, or for possession with intent~~
33 ~~to manufacture or deliver, cannabis under state law, and investigating~~
34 ~~peace officers and law enforcement agencies may not be held civilly~~
35 ~~liable for failure to seize cannabis in this circumstance, if:~~

36 ~~(1)(a) The qualifying patient or designated provider possesses no~~
37 ~~more than fifteen cannabis plants and:~~

38 ~~(i) No more than twenty-four ounces of useable cannabis;~~

1 (ii) No more cannabis product than what could reasonably be
2 produced with no more than twenty-four ounces of useable cannabis; or

3 (iii) A combination of useable cannabis and cannabis product that
4 does not exceed a combined total representing possession and processing
5 of no more than twenty-four ounces of useable cannabis.

6 (b) If a person is both a qualifying patient and a designated
7 provider for another qualifying patient, the person may possess no more
8 than twice the amounts described in (a) of this subsection, whether the
9 plants, useable cannabis, and cannabis product are possessed
10 individually or in combination between the qualifying patient and his
11 or her designated provider;

12 (2) The qualifying patient or designated provider presents his or
13 her proof of registration with the department of health, to any peace
14 officer who questions the patient or provider regarding his or her
15 medical use of cannabis;

16 (3) The qualifying patient or designated provider keeps a copy of
17 his or her proof of registration with the registry established in
18 section 901 of this act and the qualifying patient or designated
19 provider's contact information posted prominently next to any cannabis
20 plants, cannabis products, or useable cannabis located at his or her
21 residence;

22 (4) The investigating peace officer does not possess evidence that:

23 (a) The designated provider has converted cannabis produced or
24 obtained for the qualifying patient for his or her own personal use or
25 benefit; or

26 (b) The qualifying patient has converted cannabis produced or
27 obtained for his or her own medical use to the qualifying patient's
28 personal, nonmedical use or benefit;

29 (5) The investigating peace officer does not possess evidence that
30 the designated provider has served as a designated provider to more
31 than one qualifying patient within a fifteen-day period; and

32 (6) The investigating peace officer has not observed evidence of
33 any of the circumstances identified in section 901(4) of this act.

34 NEW SECTION. Sec. 402. (1) A qualifying patient or designated
35 provider who is not registered with the registry established in section
36 901 of this act may raise the affirmative defense set forth in
37 subsection (2) of this section, if:

1 (a) The qualifying patient or designated provider presents his or
2 her valid documentation to any peace officer who questions the patient
3 or provider regarding his or her medical use of cannabis;

4 (b) The qualifying patient or designated provider possesses no more
5 cannabis than the limits set forth in RCW 69.51A.040(1);

6 (c) The qualifying patient or designated provider is in compliance
7 with all other terms and conditions of this chapter;

8 (d) The investigating peace officer does not have probable cause to
9 believe that the qualifying patient or designated provider has
10 committed a felony, or is committing a misdemeanor in the officer's
11 presence, that does not relate to the medical use of cannabis;

12 (e) No outstanding warrant for arrest exists for the qualifying
13 patient or designated provider; and

14 (f) The investigating peace officer has not observed evidence of
15 any of the circumstances identified in section 901(4) of this act.

16 (2) A qualifying patient or designated provider who is not
17 registered with the registry established in section 901 of this act,
18 but who presents his or her valid documentation to any peace officer
19 who questions the patient or provider regarding his or her medical use
20 of cannabis, may assert an affirmative defense to charges of violations
21 of state law relating to cannabis through proof at trial, by a
22 preponderance of the evidence, that he or she otherwise meets the
23 requirements of RCW 69.51A.040. A qualifying patient or designated
24 provider meeting the conditions of this subsection but possessing more
25 cannabis than the limits set forth in RCW 69.51A.040(1) may, in the
26 investigating peace officer's discretion, be taken into custody and
27 booked into jail in connection with the investigation of the incident.

28 NEW SECTION. **Sec. 403.** (1) Qualifying patients may create and
29 participate in collective gardens for the purpose of producing,
30 processing, transporting, and delivering cannabis for medical use
31 subject to the following conditions:

32 (a) No more than ten qualifying patients may participate in a
33 single collective garden at any time;

34 (b) A collective garden may contain no more than fifteen plants per
35 patient up to a total of forty-five plants;

36 (c) A collective garden may contain no more than twenty-four ounces

1 of useable cannabis per patient up to a total of seventy-two ounces of
2 useable cannabis;

3 (d) A copy of each qualifying patient's valid documentation or
4 proof of registration with the registry established in section 901 of
5 this act, including a copy of the patient's proof of identity, must be
6 available at all times on the premises of the collective garden; and

7 (e) No useable cannabis from the collective garden is delivered to
8 anyone other than one of the qualifying patients participating in the
9 collective garden.

10 (2) For purposes of this section, the creation of a "collective
11 garden" means qualifying patients sharing responsibility for acquiring
12 and supplying the resources required to produce and process cannabis
13 for medical use such as, for example, a location for a collective
14 garden; equipment, supplies, and labor necessary to plant, grow, and
15 harvest cannabis; cannabis plants, seeds, and cuttings; and equipment,
16 supplies, and labor necessary for proper construction, plumbing,
17 wiring, and ventilation of a garden of cannabis plants.

18 (3) A person who knowingly violates a provision of subsection (1)
19 of this section is not entitled to the protections of this chapter.

20 NEW SECTION. **Sec. 404.** (1) A qualifying patient may revoke his or
21 her designation of a specific provider and designate a different
22 provider at any time. A revocation of designation must be in writing,
23 signed and dated. The protections of this chapter cease to apply to a
24 person who has served as a designated provider to a qualifying patient
25 seventy-two hours after receipt of that patient's revocation of his or
26 her designation.

27 (2) A person may stop serving as a designated provider to a given
28 qualifying patient at any time. However, that person may not begin
29 serving as a designated provider to a different qualifying patient
30 until fifteen days have elapsed from the date the last qualifying
31 patient designated him or her to serve as a provider.

32 NEW SECTION. **Sec. 405.** A qualifying patient or designated
33 provider in possession of cannabis plants, useable cannabis, or
34 cannabis product exceeding the limits set forth in RCW 69.51A.040(1)
35 but otherwise in compliance with all other terms and conditions of this
36 chapter may establish an affirmative defense to charges of violations

1 of state law relating to cannabis through proof at trial, by a
2 preponderance of the evidence, that the qualifying patient's necessary
3 medical use exceeds the amounts set forth in RCW 69.51A.040(1). An
4 investigating peace officer may seize cannabis plants, useable
5 cannabis, or cannabis product exceeding the amounts set forth in RCW
6 69.51A.040(1): PROVIDED, That in the case of cannabis plants, the
7 qualifying patient or designated provider shall be allowed to select
8 the plants that will remain at the location. The officer and his or
9 her law enforcement agency may not be held civilly liable for failure
10 to seize cannabis in this circumstance.

11 NEW SECTION. **Sec. 406.** A qualifying patient or designated
12 provider who is not registered with the registry established in section
13 901 of this act or does not present his or her valid documentation to
14 a peace officer who questions the patient or provider regarding his or
15 her medical use of cannabis but is in compliance with all other terms
16 and conditions of this chapter may establish an affirmative defense to
17 charges of violations of state law relating to cannabis through proof
18 at trial, by a preponderance of the evidence, that he or she was a
19 validly authorized qualifying patient or designated provider at the
20 time of the officer's questioning. A qualifying patient or designated
21 provider who establishes an affirmative defense under the terms of this
22 section may also establish an affirmative defense under section 405 of
23 this act.

24 NEW SECTION. **Sec. 407.** A nonresident who is duly authorized to
25 engage in the medical use of cannabis under the laws of another state
26 or territory of the United States may raise an affirmative defense to
27 charges of violations of Washington state law relating to cannabis,
28 provided that the nonresident:

29 (1) Possesses no more than fifteen cannabis plants and no more than
30 twenty-four ounces of useable cannabis, no more cannabis product than
31 reasonably could be produced with no more than twenty-four ounces of
32 useable cannabis, or a combination of useable cannabis and cannabis
33 product that does not exceed a combined total representing possession
34 and processing of no more than twenty-four ounces of useable cannabis;

35 (2) Is in compliance with all provisions of this chapter other than

1 requirements relating to being a Washington resident or possessing
2 valid documentation issued by a licensed health care professional in
3 Washington;

4 (3) Presents the documentation of authorization required under the
5 nonresident's authorizing state or territory's law and proof of
6 identity issued by the authorizing state or territory to any peace
7 officer who questions the nonresident regarding his or her medical use
8 of cannabis; and

9 (4) Does not possess evidence that the nonresident has converted
10 cannabis produced or obtained for his or her own medical use to the
11 nonresident's personal, nonmedical use or benefit.

12 NEW SECTION. **Sec. 408.** A qualifying patient's medical use of
13 cannabis as authorized by a health care professional may not be a sole
14 disqualifying factor in determining the patient's suitability for an
15 organ transplant, unless it is shown that this use poses a significant
16 risk of rejection or organ failure. This section does not preclude a
17 health care professional from requiring that a patient abstain from the
18 medical use of cannabis, for a period of time determined by the health
19 care professional, while waiting for a transplant organ or before the
20 patient undergoes an organ transplant.

21 NEW SECTION. **Sec. 409.** A qualifying patient or designated
22 provider may not have his or her parental rights or residential time
23 with a child restricted solely due to his or her medical use of
24 cannabis in compliance with the terms of this chapter absent written
25 findings supported by evidence that such use has resulted in a long-
26 term impairment that interferes with the performance of parenting
27 functions as defined under RCW 26.09.004.

28 NEW SECTION. **Sec. 410.** (1) Except as provided in subsection (2)
29 of this section, a qualifying patient may not be refused housing or
30 evicted from housing solely as a result of his or her possession or use
31 of useable cannabis or cannabis products except that housing providers
32 otherwise permitted to enact and enforce prohibitions against smoking
33 in their housing may apply those prohibitions to smoking cannabis
34 provided that such smoking prohibitions are applied and enforced

1 equally as to the smoking of cannabis and the smoking of all other
2 substances, including without limitation tobacco.

3 (2) Housing programs containing a program component prohibiting the
4 use of drugs or alcohol among its residents are not required to permit
5 the medical use of cannabis among those residents.

6 NEW SECTION. **Sec. 411.** In imposing any criminal sentence,
7 deferred prosecution, stipulated order of continuance, deferred
8 disposition, or dispositional order, any court organized under the laws
9 of Washington state may permit the medical use of cannabis in
10 compliance with the terms of this chapter and exclude it as a possible
11 ground for finding that the offender has violated the conditions or
12 requirements of the sentence, deferred prosecution, stipulated order of
13 continuance, deferred disposition, or dispositional order. This
14 section does not require the accommodation of any medical use of
15 cannabis in any correctional facility or jail.

16 **Sec. 412.** RCW 69.51A.050 and 1999 c 2 s 7 are each amended to read
17 as follows:

18 (1) The lawful possession, delivery, dispensing, production, or
19 manufacture of ((~~medical-marijuana~~)) cannabis for medical use as
20 authorized by this chapter shall not result in the forfeiture or
21 seizure of any real or personal property including, but not limited to,
22 cannabis intended for medical use, items used to facilitate the medical
23 use of cannabis or its production or dispensing for medical use, or
24 proceeds of sales of cannabis for medical use made by licensed
25 producers, licensed processors of cannabis products, or licensed
26 dispensers.

27 (2) No person shall be prosecuted for constructive possession,
28 conspiracy, or any other criminal offense solely for being in the
29 presence or vicinity of ((~~medical-marijuana~~)) cannabis intended for
30 medical use or its use as authorized by this chapter.

31 (3) The state shall not be held liable for any deleterious outcomes
32 from the medical use of ((~~marijuana~~)) cannabis by any qualifying
33 patient.

34 NEW SECTION. **Sec. 413.** Nothing in this chapter or in the rules
35 adopted to implement it precludes a qualifying patient or designated

1 provider from engaging in the private, unlicensed, noncommercial
2 production, possession, transportation, delivery, or administration of
3 cannabis for medical use as authorized under RCW 69.51A.040.

4 **PART V**
5 **LIMITATIONS ON PROTECTIONS FOR QUALIFYING**
6 **PATIENTS AND DESIGNATED PROVIDERS**

7 **Sec. 501.** RCW 69.51A.060 and 2010 c 284 s 4 are each amended to
8 read as follows:

9 (1) It shall be a (~~misdemeanor~~) class 3 civil infraction to use
10 or display medical (~~marijuana~~) cannabis in a manner or place which is
11 open to the view of the general public.

12 (2) Nothing in this chapter (~~requires any health insurance~~
13 ~~provider~~) establishes a right of care as a covered benefit or requires
14 any state purchased health care as defined in RCW 41.05.011 or other
15 health carrier or health plan as defined in Title 48 RCW to be liable
16 for any claim for reimbursement for the medical use of (~~marijuana~~)
17 cannabis. Such entities may enact coverage or noncoverage criteria or
18 related policies for payment or nonpayment of medical cannabis in their
19 sole discretion.

20 (3) Nothing in this chapter requires any health care professional
21 to authorize the medical use of (~~medical marijuana~~) cannabis for a
22 patient.

23 (4) Nothing in this chapter requires any accommodation of any on-
24 site medical use of (~~marijuana~~) cannabis in any place of employment,
25 in any school bus or on any school grounds, in any youth center, in any
26 correctional facility, or smoking (~~medical marijuana~~) cannabis in any
27 public place (~~as that term is defined in RCW 70.160.020~~) or hotel or
28 motel.

29 (5) Nothing in this chapter authorizes the use of medical cannabis
30 by any person who is subject to the Washington code of military justice
31 in chapter 38.38 RCW.

32 (6) Employers may establish drug-free work policies. Nothing in
33 this chapter requires an accommodation for the medical use of cannabis
34 if an employer has a drug-free work place.

35 (7) It is a class C felony to fraudulently produce any record
36 purporting to be, or tamper with the content of any record for the

1 purpose of having it accepted as, valid documentation under RCW
2 69.51A.010(~~(+7)~~) (32)(a), or to backdate such documentation to a time
3 earlier than its actual date of execution.

4 ~~((+6))~~ (8) No person shall be entitled to claim the ~~((affirmative~~
5 ~~defense provided in RCW 69.51A.040))~~ protection from arrest and
6 prosecution under RCW 69.51A.040 or the affirmative defense under
7 section 402 of this act for engaging in the medical use of
8 ~~((marijuana))~~ cannabis in a way that endangers the health or well-being
9 of any person through the use of a motorized vehicle on a street, road,
10 or highway, including violations of RCW 46.61.502 or 46.61.504, or
11 equivalent local ordinances.

12 PART VI

13 LICENSED PRODUCERS AND LICENSED PROCESSORS OF CANNABIS PRODUCTS

14 NEW SECTION. **Sec. 601.** A person may not act as a licensed
15 producer without a license for each production facility issued by the
16 department of agriculture and prominently displayed on the premises.
17 Provided they are acting in compliance with the terms of this chapter
18 and rules adopted to enforce and carry out its purposes, licensed
19 producers and their employees, members, officers, and directors may
20 manufacture, plant, cultivate, grow, harvest, produce, prepare,
21 propagate, process, package, repackage, transport, transfer, deliver,
22 label, relabel, wholesale, or possess cannabis intended for medical use
23 by qualifying patients, including seeds, seedlings, cuttings, plants,
24 and useable cannabis, and may not be arrested, searched, prosecuted, or
25 subject to other criminal sanctions or civil consequences under state
26 law, or have real or personal property searched, seized, or forfeited
27 pursuant to state law, for such activities, notwithstanding any other
28 provision of law.

29 NEW SECTION. **Sec. 602.** A person may not act as a licensed
30 processor without a license for each processing facility issued by the
31 department of agriculture and prominently displayed on the premises.
32 Provided they are acting in compliance with the terms of this chapter
33 and rules adopted to enforce and carry out its purposes, licensed
34 processors of cannabis products and their employees, members, officers,
35 and directors may possess useable cannabis and manufacture, produce,

1 prepare, process, package, repackage, transport, transfer, deliver,
2 label, relabel, wholesale, or possess cannabis products intended for
3 medical use by qualifying patients, and may not be arrested, searched,
4 prosecuted, or subject to other criminal sanctions or civil
5 consequences under state law, or have real or personal property
6 searched, seized, or forfeited pursuant to state law, for such
7 activities, notwithstanding any other provision of law.

8 NEW SECTION. **Sec. 603.** The director shall administer and carry
9 out the provisions of this chapter relating to licensed producers and
10 licensed processors of cannabis products, and rules adopted under this
11 chapter.

12 NEW SECTION. **Sec. 604.** (1) On a schedule determined by the
13 department of agriculture, licensed producers and licensed processors
14 must submit representative samples of cannabis grown or processed to a
15 cannabis analysis laboratory for grade, condition, cannabinoid profile,
16 THC concentration, other qualitative measurements of cannabis intended
17 for medical use, and other inspection standards determined by the
18 department of agriculture. Any samples remaining after testing must be
19 destroyed by the laboratory or returned to the licensed producer or
20 licensed processor.

21 (2) Licensed producers and licensed processors must submit copies
22 of the results of this inspection and testing to the department of
23 agriculture on a form developed by the department.

24 (3) If a representative sample of cannabis tested under this
25 section has a THC concentration of three-tenths of one percent or less,
26 the lot of cannabis the sample was taken from may not be sold for
27 medical use and must be destroyed or sold to a manufacturer of hemp
28 products.

29 NEW SECTION. **Sec. 605.** The department of agriculture may contract
30 with a cannabis analysis laboratory to conduct independent inspection
31 and testing of cannabis samples to verify testing results provided
32 under section 604 of this act.

33 NEW SECTION. **Sec. 606.** The department of agriculture may adopt
34 rules on:

1 (1) Facility standards, including scales, for all licensed
2 producers and licensed processors of cannabis products;

3 (2) Measurements for cannabis intended for medical use, including
4 grade, condition, cannabinoid profile, THC concentration, other
5 qualitative measurements, and other inspection standards for cannabis
6 intended for medical use; and

7 (3) Methods to identify cannabis intended for medical use so that
8 such cannabis may be readily identified if stolen or removed in
9 violation of the provisions of this chapter from a production or
10 processing facility, or if otherwise unlawfully transported.

11 NEW SECTION. **Sec. 607.** The director is authorized to deny,
12 suspend, or revoke a producer's or processor's license after a hearing
13 in any case in which it is determined that there has been a violation
14 or refusal to comply with the requirements of this chapter or rules
15 adopted hereunder. All hearings for the denial, suspension, or
16 revocation of a producer's or processor's license are subject to
17 chapter 34.05 RCW, the administrative procedure act, as enacted or
18 hereafter amended.

19 NEW SECTION. **Sec. 608.** (1) By January 1, 2013, taking into
20 consideration, but not being limited by, the security requirements
21 described in 21 C.F.R. Sec. 1301.71-1301.76, the director shall adopt
22 rules:

23 (a) On the inspection or grading and certification of grade,
24 grading factors, condition, cannabinoid profile, THC concentration, or
25 other qualitative measurement of cannabis intended for medical use that
26 must be used by cannabis analysis laboratories in section 604 of this
27 act;

28 (b) Fixing the sizes, dimensions, and safety and security features
29 required of containers to be used for packing, handling, or storing
30 cannabis intended for medical use;

31 (c) Establishing labeling requirements for cannabis intended for
32 medical use including, but not limited to:

33 (i) The business or trade name and Washington state unified
34 business identifier (UBI) number of the licensed producer of the
35 cannabis;

36 (ii) THC concentration; and

1 (iii) Information on whether the cannabis was grown using organic,
2 inorganic, or synthetic fertilizers;

3 (d) Establishing requirements for transportation of cannabis
4 intended for medical use from production facilities to processing
5 facilities and licensed dispensers;

6 (e) Establishing security requirements for the facilities of
7 licensed producers and licensed processors of cannabis products. These
8 security requirements must consider the safety of the licensed
9 producers and licensed processors as well as the safety of the
10 community surrounding the licensed producers and licensed processors;

11 (f) Establishing requirements for the licensure of producers, and
12 processors of cannabis products, setting forth procedures to obtain
13 licenses, and determining expiration dates and renewal requirements;
14 and

15 (g) Establishing license application and renewal fees for the
16 licensure of producers and processors of cannabis products.

17 (2) Fees collected under this section must be deposited into the
18 agricultural local fund created in RCW 43.23.230.

19 (3) During the rule-making process, the department of agriculture
20 shall consult with stakeholders and persons with relevant expertise, to
21 include but not be limited to qualifying patients, designated
22 providers, health care professionals, state and local law enforcement
23 agencies, and the department of health.

24 NEW SECTION. **Sec. 609.** (1) Each licensed producer and licensed
25 processor of cannabis products shall maintain complete records at all
26 times with respect to all cannabis produced, processed, weighed,
27 tested, stored, shipped, or sold. The director shall adopt rules
28 specifying the minimum recordkeeping requirements necessary to comply
29 with this section.

30 (2) The property, books, records, accounts, papers, and proceedings
31 of every licensed producer and licensed processor of cannabis products
32 shall be subject to inspection by the department of agriculture at any
33 time during ordinary business hours. Licensed producers and licensed
34 processors of cannabis products shall maintain adequate records and
35 systems for the filing and accounting of crop production, product
36 manufacturing and processing, records of weights and measurements,

1 product testing, receipts, canceled receipts, other documents, and
2 transactions necessary or common to the medical cannabis industry.

3 (3) The director may administer oaths and issue subpoenas to compel
4 the attendance of witnesses, or the production of books, documents, and
5 records anywhere in the state pursuant to a hearing relative to the
6 purposes and provisions of this chapter. Witnesses shall be entitled
7 to fees for attendance and travel, as provided in chapter 2.40 RCW.

8 (4) Each licensed producer and licensed processor of cannabis
9 products shall report information to the department of agriculture at
10 such times and as may be reasonably required by the director for the
11 necessary enforcement and supervision of a sound, reasonable, and
12 efficient cannabis inspection program for the protection of the health
13 and welfare of qualifying patients.

14 NEW SECTION. **Sec. 610.** (1) The department of agriculture may give
15 written notice to a licensed producer or processor of cannabis products
16 to furnish required reports, documents, or other requested information,
17 under such conditions and at such time as the department of agriculture
18 deems necessary if a licensed producer or processor of cannabis
19 products fails to:

20 (a) Submit his or her books, papers, or property to lawful
21 inspection or audit;

22 (b) Submit required laboratory results, reports, or documents to
23 the department of agriculture by their due date; or

24 (c) Furnish the department of agriculture with requested
25 information.

26 (2) If the licensed producer or processor of cannabis products
27 fails to comply with the terms of the notice within seventy-two hours
28 from the date of its issuance, or within such further time as the
29 department of agriculture may allow, the department of agriculture
30 shall levy a fine of five hundred dollars per day from the final date
31 for compliance allowed by this section or the department of
32 agriculture. In those cases where the failure to comply continues for
33 more than seven days or where the director determines the failure to
34 comply creates a threat to public health, public safety, or a
35 substantial risk of diversion of cannabis to unauthorized persons or
36 purposes, the department of agriculture may, in lieu of levying further

1 fines, petition the superior court of the county where the licensee's
2 principal place of business in Washington is located, as shown by the
3 license application, for an order:

4 (a) Authorizing the department of agriculture to seize and take
5 possession of all books, papers, and property of all kinds used in
6 connection with the conduct or the operation of the licensed producer
7 or processor's business, and the books, papers, records, and property
8 that pertain specifically, exclusively, and directly to that business;
9 and

10 (b) Enjoining the licensed producer or processor from interfering
11 with the department of agriculture in the discharge of its duties as
12 required by this chapter.

13 (3) All necessary costs and expenses, including attorneys' fees,
14 incurred by the department of agriculture in carrying out the
15 provisions of this section may be recovered at the same time and as
16 part of the action filed under this section.

17 (4) The department of agriculture may request the Washington state
18 patrol to assist it in enforcing this section if needed to ensure the
19 safety of its employees.

20 NEW SECTION. **Sec. 611.** (1) A licensed producer may not sell or
21 deliver cannabis to any person other than a cannabis analysis
22 laboratory, licensed processor of cannabis products, licensed
23 dispenser, or law enforcement officer except as provided by court
24 order. A licensed producer may also sell or deliver cannabis to the
25 University of Washington or Washington State University for research
26 purposes, as identified in section 1002 of this act. Violation of this
27 section is a class C felony punishable according to chapter 9A.20 RCW.

28 (2) A licensed processor of cannabis products may not sell or
29 deliver cannabis to any person other than a cannabis analysis
30 laboratory, licensed dispenser, or law enforcement officer except as
31 provided by court order. A licensed processor of cannabis products may
32 also sell or deliver cannabis to the University of Washington or
33 Washington State University for research purposes, as identified in
34 section 1002 of this act. Violation of this section is a class C
35 felony punishable according to chapter 9A.20 RCW.

PART VII
LICENSED DISPENSERS

1
2
3 NEW SECTION. **Sec. 701.** A person may not act as a licensed
4 dispenser without a license for each place of business issued by the
5 department of health and prominently displayed on the premises.
6 Provided they are acting in compliance with the terms of this chapter
7 and rules adopted to enforce and carry out its purposes, licensed
8 dispensers and their employees, members, officers, and directors may
9 deliver, distribute, dispense, transfer, prepare, package, repackage,
10 label, relabel, sell at retail, or possess cannabis intended for
11 medical use by qualifying patients, including seeds, seedlings,
12 cuttings, plants, useable cannabis, and cannabis products, and may not
13 be arrested, searched, prosecuted, or subject to other criminal
14 sanctions or civil consequences under state law, or have real or
15 personal property searched, seized, or forfeited pursuant to state law,
16 for such activities, notwithstanding any other provision of law.

17 NEW SECTION. **Sec. 702.** (1) By January 1, 2013, taking into
18 consideration the security requirements described in 21 C.F.R. 1301.71-
19 1301.76, the secretary of health shall adopt rules:

20 (a) Establishing requirements for the licensure of dispensers of
21 cannabis for medical use, setting forth procedures to obtain licenses,
22 and determining expiration dates and renewal requirements;

23 (b) Providing for mandatory inspection of licensed dispensers'
24 locations;

25 (c) Establishing procedures governing the suspension and revocation
26 of licenses of dispensers;

27 (d) Establishing recordkeeping requirements for licensed
28 dispensers;

29 (e) Fixing the sizes and dimensions of containers to be used for
30 dispensing cannabis for medical use;

31 (f) Establishing safety standards for containers to be used for
32 dispensing cannabis for medical use;

33 (g) Establishing cannabis storage requirements, including security
34 requirements;

35 (h) Establishing cannabis labeling requirements, to include
36 information on whether the cannabis was grown using organic, inorganic,
37 or synthetic fertilizers;

1 (i) Establishing physical standards for cannabis dispensing
2 facilities. The physical standards must require a licensed dispenser
3 to ensure that no cannabis or cannabis paraphernalia may be viewed from
4 outside the facility;

5 (j) Establishing maximum amounts of cannabis and cannabis products
6 that may be kept at one time at a dispensary. In determining maximum
7 amounts, the secretary must consider the security of the dispensary and
8 the surrounding community;

9 (k) Establishing physical standards for sanitary conditions for
10 cannabis dispensing facilities;

11 (l) Establishing physical and sanitation standards for cannabis
12 dispensing equipment;

13 (m) Establishing a maximum number of licensed dispensers that may
14 be licensed in each county as provided in this section;

15 (n) Enforcing and carrying out the provisions of this section and
16 the rules adopted to carry out its purposes; and

17 (o) Establishing license application and renewal fees for the
18 licensure of dispensers in accordance with RCW 43.70.250.

19 (2)(a) The secretary shall establish a maximum number of licensed
20 dispensers that may operate in each county. Prior to January 1, 2016,
21 the maximum number of licensed dispensers shall be based upon a ratio
22 of one licensed dispenser for every twenty thousand persons in a
23 county. On or after January 1, 2016, the secretary may adopt rules to
24 adjust the method of calculating the maximum number of dispensers to
25 consider additional factors, such as the number of enrollees in the
26 registry established in section 901 of this act and the secretary's
27 experience in administering the program. The secretary may not issue
28 more licenses than the maximum number of licenses established under
29 this section.

30 (b) In the event that the number of applicants qualifying for the
31 selection process exceeds the maximum number for a county, the
32 secretary shall initiate a random selection process established by the
33 secretary in rule.

34 (c) To qualify for the selection process, an applicant must
35 demonstrate to the secretary that he or she meets initial screening
36 criteria that represent the applicant's capacity to operate in
37 compliance with this chapter. Initial screening criteria shall
38 include, but not be limited to:

- 1 (i) Successful completion of a background check;
- 2 (ii) A plan to systematically verify qualifying patient and
3 designated provider status of clients;
- 4 (iii) Evidence of compliance with functional standards, such as
5 ventilation and security requirements; and
- 6 (iv) Evidence of compliance with facility standards, such as zoning
7 compliance and not using the facility as a residence.
- 8 (d) The secretary shall establish a schedule to:
- 9 (i) Update the maximum allowable number of licensed dispensers in
10 each county; and
- 11 (ii) Issue approvals to operate within a county according to the
12 random selection process.
- 13 (3) Fees collected under this section must be deposited into the
14 health professions account created in RCW 43.70.320.
- 15 (4) During the rule-making process, the department of health shall
16 consult with stakeholders and persons with relevant expertise, to
17 include but not be limited to qualifying patients, designated
18 providers, health care professionals, state and local law enforcement
19 agencies, and the department of agriculture.

20 NEW SECTION. **Sec. 703.** A licensed dispenser may not sell cannabis
21 received from any person other than a licensed producer or licensed
22 processor of cannabis products, or sell or deliver cannabis to any
23 person other than a qualifying patient, designated provider, or law
24 enforcement officer except as provided by court order. A licensed
25 dispenser may also sell or deliver cannabis to the University of
26 Washington or Washington State University for research purposes, as
27 identified in section 1002 of this act. Before selling or providing
28 cannabis to a qualifying patient or designated provider, the licensed
29 dispenser must confirm that the patient qualifies for the medical use
30 of cannabis by contacting, at least once in a one-year period, that
31 patient's health care professional. Violation of this section is a
32 class C felony punishable according to chapter 9A.20 RCW.

33 NEW SECTION. **Sec. 704.** A license to operate as a licensed
34 dispenser is not transferrable.

1 NEW SECTION. **Sec. 803.** (1) A prior conviction for a cannabis or
2 marijuana offense shall not disqualify an applicant from receiving a
3 license to produce, process, or dispense cannabis for medical use,
4 provided the conviction did not include any sentencing enhancements
5 under RCW 9.94A.533 or analogous laws in other jurisdictions. Any
6 criminal conviction of a current licensee may be considered in
7 proceedings to suspend or revoke a license.

8 (2) Nothing in this section prohibits either the department of
9 health or the department of agriculture, as appropriate, from denying,
10 suspending, or revoking the credential of a license holder for other
11 drug-related offenses or any other criminal offenses.

12 (3) Nothing in this section prohibits a corrections agency or
13 department from considering all prior and current convictions in
14 determining whether the possession, manufacture, or delivery of, or for
15 possession with intent to manufacture or deliver, is inconsistent with
16 and contrary to the person's supervision.

17 NEW SECTION. **Sec. 804.** A violation of any provision or section of
18 this chapter that relates to the licensing and regulation of producers,
19 processors, or dispensers, where no other penalty is provided for, and
20 the violation of any rule adopted under this chapter constitutes a
21 misdemeanor.

22 NEW SECTION. **Sec. 805.** (1) Every licensed producer or processor
23 of cannabis products who fails to comply with this chapter, or any rule
24 adopted under it, may be subjected to a civil penalty, as determined by
25 the director, in an amount of not more than one thousand dollars for
26 every such violation. Each violation shall be a separate and distinct
27 offense.

28 (2) Every licensed dispenser who fails to comply with this chapter,
29 or any rule adopted under it, may be subjected to a civil penalty, as
30 determined by the secretary, in an amount of not more than one thousand
31 dollars for every such violation. Each violation shall be a separate
32 and distinct offense.

33 (3) Every person who, through an act of commission or omission,
34 procures, aids, or abets in the violation shall be considered to have
35 violated this chapter and may be subject to the penalty provided for in
36 this section.

1 rules for the creation, implementation, maintenance, and timely
2 upgrading of a secure and confidential registration system that allows:

3 (a) A peace officer to verify at any time whether a health care
4 professional has registered a person as either a qualifying patient or
5 a designated provider; and

6 (b) A peace officer to verify at any time whether a person,
7 location, or business is licensed by the department of agriculture or
8 the department of health as a licensed producer, licensed processor of
9 cannabis products, or licensed dispenser.

10 (2) The department of agriculture must, in consultation with the
11 department of health, create and maintain a secure and confidential
12 list of persons to whom it has issued a license to produce cannabis for
13 medical use or a license to process cannabis products, and the physical
14 addresses of the licensees' production and processing facilities. The
15 list must meet the requirements of subsection (9) of this section and
16 be transmitted to the department of health to be included in the
17 registry established by this section.

18 (3) The department of health must, in consultation with the
19 department of agriculture, create and maintain a secure and
20 confidential list of the persons to whom it has issued a license to
21 dispense cannabis for medical use that meets the requirements of
22 subsection (9) of this section and must be included in the registry
23 established by this section.

24 (4) Before seeking a nonvehicle search warrant or arrest warrant,
25 a peace officer investigating a cannabis-related incident must make
26 reasonable efforts to ascertain whether the location or person under
27 investigation is registered in the registration system, and include the
28 results of this inquiry in the affidavit submitted in support of the
29 application for the warrant. This requirement does not apply to
30 investigations in which:

31 (a) The peace officer has observed evidence of an apparent cannabis
32 operation that is not a licensed producer, processor of cannabis
33 products, or dispenser;

34 (b) The peace officer has observed evidence of theft of electrical
35 power;

36 (c) The peace officer has observed evidence of illegal drugs other
37 than cannabis at the premises;

1 (d) The peace officer has observed frequent and numerous short-term
2 visits over an extended period that are consistent with commercial
3 activity, if the subject of the investigation is not a licensed
4 dispenser;

5 (e) The peace officer has observed violent crime or other
6 demonstrated dangers to the community;

7 (f) The peace officer has probable cause to believe the subject of
8 the investigation has committed a felony, or a misdemeanor in the
9 officer's presence, that does not relate to cannabis; or

10 (g) The subject of the investigation has an outstanding arrest
11 warrant.

12 (5) Law enforcement may access the registration system only in
13 connection with a specific, legitimate criminal investigation regarding
14 cannabis.

15 (6) Registration in the system shall be optional for qualifying
16 patients and designated providers, not mandatory, and registrations are
17 valid for one year, except that qualifying patients must be able to
18 remove themselves from the registry at any time. For licensees,
19 registrations are valid for the term of the license and the
20 registration must be removed if the licensee's license is expired or
21 revoked. The department of health must adopt rules providing for
22 registration renewals and for removing expired registrations and
23 expired or revoked licenses from the registry.

24 (7) Fees, including renewal fees, for qualifying patients and
25 designated providers participating in the registration system shall be
26 limited to the cost to the state of implementing, maintaining, and
27 enforcing the provisions of this section and the rules adopted to carry
28 out its purposes. The fee shall also include any costs for the
29 department of health to disseminate information to employees of state
30 and local law enforcement agencies relating to whether a person is a
31 licensed producer, processor of cannabis products, or dispenser, or
32 that a location is the recorded address of a license producer,
33 processor of cannabis products, or dispenser, and for the dissemination
34 of log records relating to such requests for information to the
35 subjects of those requests. No fee may be charged to local law
36 enforcement agencies for accessing the registry.

37 (8) During the rule-making process, the department of health shall
38 consult with stakeholders and persons with relevant expertise, to

1 include, but not be limited to, qualifying patients, designated
2 providers, health care professionals, state and local law enforcement
3 agencies, and the University of Washington computer science and
4 engineering security and privacy research lab.

5 (9) The registration system shall meet the following requirements:

6 (a) Any personally identifiable information included in the
7 registration system must be "nonreversible," pursuant to definitions
8 and standards set forth by the national institute of standards and
9 technology;

10 (b) Any personally identifiable information included in the
11 registration system must not be susceptible to linkage by use of data
12 external to the registration system;

13 (c) The registration system must incorporate current best
14 differential privacy practices, allowing for maximum accuracy of
15 registration system queries while minimizing the chances of identifying
16 the personally identifiable information included therein; and

17 (d) The registration system must be upgradable and updated in a
18 timely fashion to keep current with state of the art privacy and
19 security standards and practices.

20 (10) The registration system shall maintain a log of each
21 verification query submitted by a peace officer, including the peace
22 officer's name, agency, and identification number, for a period of no
23 less than three years from the date of the query. Personally
24 identifiable information of qualifying patients and designated
25 providers included in the log shall be confidential and exempt from
26 public disclosure, inspection, or copying under chapter 42.56 RCW:
27 PROVIDED, That:

28 (a) Names and other personally identifiable information from the
29 list may be released only to:

30 (i) Authorized employees of the department of agriculture and the
31 department of health as necessary to perform official duties of either
32 department; or

33 (ii) Authorized employees of state or local law enforcement
34 agencies, only as necessary to verify that the person or location is a
35 qualified patient, designated provider, licensed producer, licensed
36 processor of cannabis products, or licensed dispenser, and only after
37 the inquiring employee has provided adequate identification.
38 Authorized employees who obtain personally identifiable information

1 under this subsection may not release or use the information for any
2 purpose other than verification that a person or location is a
3 qualified patient, designated provider, licensed producer, licensed
4 processor of cannabis products, or licensed dispenser;

5 (b) Information contained in the registration system may be
6 released in aggregate form, with all personally identifying information
7 redacted, for the purpose of statistical analysis and oversight of
8 agency performance and actions;

9 (c) The subject of a registration query may appear during ordinary
10 department of health business hours and inspect or copy log records
11 relating to him or her upon adequate proof of identity; and

12 (d) The subject of a registration query may submit a written
13 request to the department of health, along with adequate proof of
14 identity, for copies of log records relating to him or her.

15 (11) This section does not prohibit a department of agriculture
16 employee or a department of health employee from contacting state or
17 local law enforcement for assistance during an emergency or while
18 performing his or her duties under this chapter.

19 (12) Fees collected under this section must be deposited into the
20 health professions account under RCW 43.70.320.

21 NEW SECTION. **Sec. 902.** A new section is added to chapter 42.56
22 RCW to read as follows:

23 Records containing names and other personally identifiable
24 information relating to qualifying patients, designated providers, and
25 persons licensed as producers or dispensers of cannabis for medical
26 use, or as processors of cannabis products, under section 901 of this
27 act are exempt from disclosure under this chapter.

28 **PART X**
29 **EVALUATION**

30 NEW SECTION. **Sec. 1001.** (1) By July 1, 2014, the Washington state
31 institute for public policy shall, within available funds, conduct a
32 cost-benefit evaluation of the implementation of this act and the rules
33 adopted to carry out its purposes.

34 (2) The evaluation of the implementation of this act and the rules

1 adopted to carry out its purposes shall include, but not necessarily be
2 limited to, consideration of the following factors:

3 (a) Qualifying patients' access to an adequate source of cannabis
4 for medical use;

5 (b) Qualifying patients' access to a safe source of cannabis for
6 medical use;

7 (c) Qualifying patients' access to a consistent source of cannabis
8 for medical use;

9 (d) Qualifying patients' access to a secure source of cannabis for
10 medical use;

11 (e) Qualifying patients' and designated providers' contact with law
12 enforcement and involvement in the criminal justice system;

13 (f) Diversion of cannabis intended for medical use to nonmedical
14 uses;

15 (g) Incidents of home invasion burglaries, robberies, and other
16 violent and property crimes associated with qualifying patients
17 accessing cannabis for medical use;

18 (h) Whether there are health care professionals who make a
19 disproportionately high amount of authorizations in comparison to the
20 health care professional community at large;

21 (i) Whether there are indications of health care professionals in
22 violation of RCW 69.51A.030; and

23 (j) Whether the health care professionals making authorizations
24 reside in this state or out of this state.

25 (3) For purposes of facilitating this evaluation, the departments
26 of health and agriculture will make available to the Washington state
27 institute for public policy requested data, and any other data either
28 department may consider relevant, from which all personally
29 identifiable information has been redacted.

30 NEW SECTION. **Sec. 1002.** A new section is added to chapter 28B.20
31 RCW to read as follows:

32 The University of Washington and Washington State University may
33 conduct scientific research on the efficacy and safety of administering
34 cannabis as part of medical treatment. As part of this research, the
35 University of Washington and Washington State University may develop
36 and conduct studies to ascertain the general medical safety and

1 efficacy of cannabis and may develop medical guidelines for the
2 appropriate administration and use of cannabis.

3 **PART XI**
4 **CONSTRUCTION**

5 NEW SECTION. **Sec. 1101.** (1) No civil or criminal liability may be
6 imposed by any court on the state or its officers and employees for
7 actions taken in good faith under this chapter and within the scope of
8 their assigned duties.

9 (2) No civil or criminal liability may be imposed by any court on
10 cities, towns, and counties or other municipalities and their officers
11 and employees for actions taken in good faith under this chapter and
12 within the scope of their assigned duties.

13 NEW SECTION. **Sec. 1102.** (1) Cities and towns may adopt and
14 enforce any of the following pertaining to the production, processing,
15 or dispensing of cannabis or cannabis products within their
16 jurisdiction: Zoning requirements, business licensing requirements,
17 health and safety requirements, and business taxes. Nothing in this
18 act is intended to limit the authority of cities and towns to impose
19 zoning requirements or other conditions upon licensed dispensers, so
20 long as such requirements do not preclude the possibility of siting
21 licensed dispensers within the jurisdiction. If the jurisdiction has
22 no commercial zones, the jurisdiction is not required to adopt zoning
23 to accommodate licensed dispensers.

24 (2) Counties may adopt and enforce any of the following pertaining
25 to the production, processing, or dispensing of cannabis or cannabis
26 products within their jurisdiction in locations outside of the
27 corporate limits of any city or town: Zoning requirements, business
28 licensing requirements, and health and safety requirements. Nothing in
29 this act is intended to limit the authority of counties to impose
30 zoning requirements or other conditions upon licensed dispensers, so
31 long as such requirements do not preclude the possibility of siting
32 licensed dispensers within the jurisdiction. If the jurisdiction has
33 no commercial zones, the jurisdiction is not required to adopt zoning
34 to accommodate licensed dispensers.

1 NEW SECTION. **Sec. 1103.** If any provision of this act or the
2 application thereof to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications of the act
4 that can be given effect without the invalid provision or application,
5 and to this end the provisions of this act are severable.

6 NEW SECTION. **Sec. 1104.** In the event that the federal government
7 authorizes the use of cannabis for medical purposes, within a year of
8 such action, the joint legislative audit and review committee shall
9 conduct a program and fiscal review of the cannabis production and
10 dispensing programs established in this chapter. The review shall
11 consider whether a distinct cannabis production and dispensing system
12 continues to be necessary when considered in light of the federal
13 action and make recommendations to the legislature.

14 NEW SECTION. **Sec. 1105.** (1)(a) The arrest and prosecution
15 protections established in section 401 of this act may not be asserted
16 in a supervision revocation or violation hearing by a person who is
17 supervised by a corrections agency or department, including local
18 governments or jails, that has determined that the terms of this
19 section are inconsistent with and contrary to his or her supervision.

20 (b) The affirmative defenses established in sections 402, 405, 406,
21 and 407 of this act may not be asserted in a supervision revocation or
22 violation hearing by a person who is supervised by a corrections agency
23 or department, including local governments or jails, that has
24 determined that the terms of this section are inconsistent with and
25 contrary to his or her supervision.

26 (2) The provisions of RCW 69.51A.040 and sections 403 and 413 of
27 this act do not apply to a person who is supervised for a criminal
28 conviction by a corrections agency or department, including local
29 governments or jails, that has determined that the terms of this
30 chapter are inconsistent with and contrary to his or her supervision.

31 (3) A person may not be licensed as a licensed producer, licensed
32 processor of cannabis products, or a licensed dispenser under section
33 601, 602, or 701 of this act if he or she is supervised for a criminal
34 conviction by a corrections agency or department, including local
35 governments or jails, that has determined that licensure is
36 inconsistent with and contrary to his or her supervision.

1 (c) Be registered with the secretary of state as of May 1, 2011;

2 (d) File a letter of intent with the department of agriculture or
3 the department of health, as the case may be, asserting that the
4 producer or dispenser intends to become licensed in accordance with
5 this chapter and rules adopted by the appropriate department; and

6 (e) File a letter of intent with the city clerk if in an
7 incorporated area or to the county clerk if in an unincorporated area
8 stating they operate as a producer or dispensary and that they comply
9 with the provisions of this chapter and will comply with subsequent
10 department rule making.

11 (4) Upon receiving a letter of intent under subsection (3) of this
12 section, the department of agriculture, the department of health, and
13 the city clerk or county clerk must send a letter of acknowledgment to
14 the producer or dispenser. The producer and dispenser must display
15 this letter of acknowledgment in a prominent place in their facility.

16 (5) Letters of intent filed with a public agency, letters of
17 acknowledgement sent from those agencies, and other materials related
18 to such letters are exempt from public disclosure under chapter 42.56
19 RCW.

20 (6) This section expires upon the establishment of the licensing
21 programs of the department of agriculture and the department of health
22 and the commencement of the issuance of licenses for dispensers and
23 producers as provided in this chapter. The department of health and
24 the department of agriculture shall notify the code reviser when the
25 establishment of the licensing programs has occurred.

26 NEW SECTION. **Sec. 1202.** A new section is added to chapter 42.56
27 RCW to read as follows:

28 The following information related to cannabis producers and
29 cannabis dispensers are exempt from disclosure under this section:

30 (1) Letters of intent filed with a public agency under section 1201
31 of this act;

32 (2) Letters of acknowledgement sent from a public agency under
33 section 1201 of this act;

34 (3) Materials related to letters of intent and acknowledgement
35 under section 1201 of this act.

1 NEW SECTION. **Sec. 1203.** (1)(a) On July 1, 2015, the department of
2 health shall report the following information to the state treasurer:

3 (i) The expenditures from the health professions account related to
4 the administration of chapter 69.51A RCW between the effective date of
5 this section and June 30, 2015; and

6 (ii) The amounts deposited into the health professions account
7 under sections 702, 802, and 901 of this act between the effective date
8 of this section and June 30, 2015.

9 (b) If the amount in (a)(i) of this subsection exceeds the amount
10 in (a)(ii) of this subsection, the state treasurer shall transfer an
11 amount equal to the difference from the general fund to the health
12 professions account.

13 (2)(a) Annually, beginning July 1, 2016, the department of health
14 shall report the following information to the state treasurer:

15 (i) The expenditures from the health professions account related to
16 the administration of chapter 69.51A RCW for the preceding fiscal year;
17 and

18 (ii) The amounts deposited into the health professions account
19 under sections 702, 802, and 901 of this act during the preceding
20 fiscal year.

21 (b) If the amount in (a)(i) of this subsection exceeds the amount
22 in (a)(ii) of this subsection, the state treasurer shall transfer an
23 amount equal to the difference from the general fund to the health
24 professions account.

25 NEW SECTION. **Sec. 1204.** RCW 69.51A.080 (Adoption of rules by the
26 department of health--Sixty-day supply for qualifying patients) and
27 2007 c 371 s 8 are each repealed.

28 NEW SECTION. **Sec. 1205.** Sections 402 through 411, 413, 601
29 through 611, 701 through 705, 801 through 807, 901, 1001, 1101 through
30 1105, and 1201 of this act are each added to chapter 69.51A RCW.

31 NEW SECTION. **Sec. 1206.** Section 1002 of this act takes effect
32 January 1, 2013.

--- END ---



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Health.

- Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

- Emergency Rules
 Immediately upon filing.
 Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: WAC 246-75-010 defines the quantity of marijuana that could reasonably be presumed to be a sixty day supply allowed under the medical marijuana law (chapter 69.51A RCW) for qualifying patients. The rules clarify the existing law, and will assist patients, designated providers, physicians, law enforcement, and others in understanding what constitutes a sixty day supply of medical marijuana.

Citation of existing rules affected by this order:

Repealed: none
Amended: none
Suspended: none

Statutory authority for adoption: RCW 69.51A.080 (Chapter 371, Laws of 2007)

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-14-149 on 07/01/2008 (date).

Describe any changes other than editing from proposed to adopted version: See attached

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: DOH Medical Marijuana phone (360) 236-4612
Address: PO BOX 47850 fax (360) 236-4626
Olympia, WA. 98504-7850 e-mail medicalmarijuana@doh.wa.gov

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: 10/01/08

NAME (TYPE OR PRINT)

Mary C. Selecky

SIGNATURE

TITLE

Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 02, 2008
TIME: 8:52 AM

WSR 08-21-001

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
--	-----	----------	---------	----------	----------	----------

The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**WAC 246-75-010 – Medical Marijuana
CR103 Attachment**

Describe any changes other than editing from proposed to adopted version:

The department made changes to the rule to address public comment about the definition of “immature plant” and “mature plant” and the limit of six mature plants as part of the presumptive 60-day supply. Many comments stated the proposed definition of a 60-day supply did not include a sufficient number of plants for a 60-day supply of medical marijuana. The adopted rule allows for a limit of 15 plants in any stage of growth.

The department also removed from the proposed rule the requirement that a qualifying patient obtain documentation from a physician in order to overcome the presumptive limits. The adopted rule uses the language of the statute.

The department made the following specific changes to provisions of the rule:

WAC 246-75-010 (2) (b) and (c) were amended to remove the definition of “mature plant” and “immature plant.” The adopted rule defines a plant as any marijuana plant in any stage of growth.

WAC 246-75-010 (3) (a) was changed to remove the limit of six mature plants and eighteen immature plants. The adopted rule allows a limit of no more than fifteen plants.

WAC 246-75-010 (3) (c) was changed to remove the requirement that a qualifying patient provide documentation from the patient’s physician to overcome the rule’s presumptive amount of a 60-day supply. The adopted rule includes the statement from RCW 69.51A.080 that a qualifying patient may overcome the presumptive limit with evidence of necessary medical use.

Chapter 246-75 WAC

MEDICAL MARIJUANA

NEW SECTION

WAC 246-75-010 Medical marijuana. (1) Purpose. The purpose of this section is to define the amount of marijuana a qualifying patient could reasonably expect to need over a sixty-day period for their personal medical use. It is intended to:

- (a) Allow medical practitioners to exercise their best professional judgment in the delivery of medical treatment;
- (b) Allow designated providers to assist patients in the manner provided in chapter 69.51A RCW; and
- (c) Provide clarification to patients, law enforcement and others in the use of medical marijuana.

(2) Definitions.

- (a) "Designated provider" means a person as defined in RCW 69.51A.010.
- (b) "Plant" means any marijuana plant in any stage of growth.
- (c) "Qualifying patient" means a person as defined in RCW 69.51A.010.
- (d) "Useable marijuana" means the dried leaves and flowers of the *Cannabis* plant family Moraceae. Useable marijuana excludes stems, stalks, seeds and roots.

(3) Presumptive sixty-day supply.

- (a) A qualifying patient and a designated provider may possess a total of no more than twenty-four ounces of useable marijuana, and no more than fifteen plants.
- (b) Amounts listed in (a) of this subsection are total amounts of marijuana between both a qualifying patient and a designated provider.
- (c) The presumption in this section may be overcome with evidence of a qualifying patient's necessary medical use.

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6032

60th Legislature
2007 Regular Session

Passed by the Senate April 20, 2007
YEAS 37 NAYS 9

President of the Senate

Passed by the House April 18, 2007
YEAS 68 NAYS 27

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6032** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6032

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2007 Regular Session

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kohl-Welles, McCaslin, Kline, Regala and Keiser)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to medical use of marijuana; amending RCW
2 69.51A.005, 69.51A.010, 69.51A.030, 69.51A.040, 69.51A.060, and
3 69.51A.070; adding a new section to chapter 69.51A RCW; and creating a
4 new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature intends to clarify the law
7 on medical marijuana so that the lawful use of this substance is not
8 impaired and medical practitioners are able to exercise their best
9 professional judgment in the delivery of medical treatment, qualifying
10 patients may fully participate in the medical use of marijuana, and
11 designated providers may assist patients in the manner provided by this
12 act without fear of state criminal prosecution. This act is also
13 intended to provide clarification to law enforcement and to all
14 participants in the judicial system.

15 **Sec. 2.** RCW 69.51A.005 and 1999 c 2 s 2 are each amended to read
16 as follows:

17 The people of Washington state find that some patients with
18 terminal or debilitating illnesses, under their physician's care, may

1 benefit from the medical use of marijuana. Some of the illnesses for
2 which marijuana appears to be beneficial include chemotherapy-related
3 nausea and vomiting in cancer patients; AIDS wasting syndrome; severe
4 muscle spasms associated with multiple sclerosis and other spasticity
5 disorders; epilepsy; acute or chronic glaucoma; and some forms of
6 intractable pain.

7 The people find that humanitarian compassion necessitates that the
8 decision to authorize the medical use of marijuana by patients with
9 terminal or debilitating illnesses is a personal, individual decision,
10 based upon their physician's professional medical judgment and
11 discretion.

12 Therefore, the people of the state of Washington intend that:

13 Qualifying patients with terminal or debilitating illnesses who, in
14 the judgment of their physicians, (~~would~~) may benefit from the
15 medical use of marijuana, shall not be found guilty of a crime under
16 state law for their possession and limited use of marijuana;

17 Persons who act as (~~primary caregivers~~) designated providers to
18 such patients shall also not be found guilty of a crime under state law
19 for assisting with the medical use of marijuana; and

20 Physicians also be excepted from liability and prosecution for the
21 authorization of marijuana use to qualifying patients for whom, in the
22 physician's professional judgment, medical marijuana may prove
23 beneficial.

24 **Sec. 3.** RCW 69.51A.010 and 1999 c 2 s 6 are each amended to read
25 as follows:

26 The definitions in this section apply throughout this chapter
27 unless the context clearly requires otherwise.

28 (1) "Designated provider" means a person who:

29 (a) Is eighteen years of age or older;

30 (b) Has been designated in writing by a patient to serve as a
31 designated provider under this chapter;

32 (c) Is prohibited from consuming marijuana obtained for the
33 personal, medical use of the patient for whom the individual is acting
34 as designated provider; and

35 (d) Is the designated provider to only one patient at any one time.

36 (2) "Medical use of marijuana" means the production, possession, or

1 administration of marijuana, as defined in RCW 69.50.101(q), for the
2 exclusive benefit of a qualifying patient in the treatment of his or
3 her terminal or debilitating illness.

4 ~~((2) "Primary caregiver" means a person who:~~
5 ~~(a) Is eighteen years of age or older;~~
6 ~~(b) Is responsible for the housing, health, or care of the patient;~~
7 ~~(c) Has been designated in writing by a patient to perform the~~
8 ~~duties of primary caregiver under this chapter.)~~)

9 (3) "Qualifying patient" means a person who:

10 (a) Is a patient of a physician licensed under chapter 18.71 or
11 18.57 RCW;

12 (b) Has been diagnosed by that physician as having a terminal or
13 debilitating medical condition;

14 (c) Is a resident of the state of Washington at the time of such
15 diagnosis;

16 (d) Has been advised by that physician about the risks and benefits
17 of the medical use of marijuana; and

18 (e) Has been advised by that physician that they may benefit from
19 the medical use of marijuana.

20 (4) "Terminal or debilitating medical condition" means:

21 (a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis,
22 epilepsy or other seizure disorder, or spasticity disorders; or

23 (b) Intractable pain, limited for the purpose of this chapter to
24 mean pain unrelieved by standard medical treatments and medications; or

25 (c) Glaucoma, either acute or chronic, limited for the purpose of
26 this chapter to mean increased intraocular pressure unrelieved by
27 standard treatments and medications; or

28 (d) Crohn's disease with debilitating symptoms unrelieved by
29 standard treatments or medications; or

30 (e) Hepatitis C with debilitating nausea or intractable pain
31 unrelieved by standard treatments or medications; or

32 (f) Diseases, including anorexia, which result in nausea, vomiting,
33 wasting, appetite loss, cramping, seizures, muscle spasms, or
34 spasticity, when these symptoms are unrelieved by standard treatments
35 or medications; or

36 (g) Any other medical condition duly approved by the Washington
37 state medical quality assurance (~~board~~ ~~[commission]~~) commission in

1 consultation with the board of osteopathic medicine and surgery as
2 directed in this chapter.

3 (5) "Valid documentation" means:

4 (a) A statement signed by a qualifying patient's physician, or a
5 copy of the qualifying patient's pertinent medical records, which
6 states that, in the physician's professional opinion, the ~~((potential~~
7 ~~benefits of the medical use of marijuana would likely outweigh the~~
8 ~~health risks for a particular qualifying))~~ patient may benefit from the
9 medical use of marijuana; ~~((and))~~

10 (b) Proof of identity such as a Washington state driver's license
11 or identicard, as defined in RCW 46.20.035; and

12 (c) A copy of the physician statement described in (a) of this
13 subsection shall have the same force and effect as the signed original.

14 **Sec. 4.** RCW 69.51A.030 and 1999 c 2 s 4 are each amended to read
15 as follows:

16 A physician licensed under chapter 18.71 or 18.57 RCW shall be
17 excepted from the state's criminal laws and shall not be penalized in
18 any manner, or denied any right or privilege, for:

19 (1) Advising a qualifying patient about the risks and benefits of
20 medical use of marijuana or that the qualifying patient may benefit
21 from the medical use of marijuana where such use is within a
22 professional standard of care or in the individual physician's medical
23 judgment; or

24 (2) Providing a qualifying patient with valid documentation, based
25 upon the physician's assessment of the qualifying patient's medical
26 history and current medical condition, that the ~~((potential benefits of~~
27 ~~the))~~ medical use of marijuana ~~((would likely outweigh the health risks~~
28 ~~for the))~~ may benefit a particular qualifying patient.

29 **Sec. 5.** RCW 69.51A.040 and 1999 c 2 s 5 are each amended to read
30 as follows:

31 (1) If a law enforcement officer determines that marijuana is being
32 possessed lawfully under the medical marijuana law, the officer may
33 document the amount of marijuana, take a representative sample that is
34 large enough to test, but not seize the marijuana. A law enforcement
35 officer or agency shall not be held civilly liable for failure to seize
36 marijuana in this circumstance.

1 (2) If charged with a violation of state law relating to marijuana,
2 any qualifying patient who is engaged in the medical use of marijuana,
3 or any designated (~~(primary caregiver)~~) provider who assists a
4 qualifying patient in the medical use of marijuana, will be deemed to
5 have established an affirmative defense to such charges by proof of his
6 or her compliance with the requirements provided in this chapter. Any
7 person meeting the requirements appropriate to his or her status under
8 this chapter shall be considered to have engaged in activities
9 permitted by this chapter and shall not be penalized in any manner, or
10 denied any right or privilege, for such actions.

11 (~~(2) The~~) (3) A qualifying patient, if eighteen years of age or
12 older, or a designated provider shall:

13 (a) Meet all criteria for status as a qualifying patient or
14 designated provider;

15 (b) Possess no more marijuana than is necessary for the patient's
16 personal, medical use, not exceeding the amount necessary for a sixty-
17 day supply; and

18 (c) Present his or her valid documentation to any law enforcement
19 official who questions the patient or provider regarding his or her
20 medical use of marijuana.

21 (~~(3) The~~) (4) A qualifying patient, if under eighteen years of
22 age at the time he or she is alleged to have committed the offense,
23 shall (~~comply~~) demonstrate compliance with subsection (~~(2)~~) (3)(a)
24 and (c) of this section. However, any possession under subsection
25 (~~(2)~~) (3)(b) of this section, as well as any production, acquisition,
26 and decision as to dosage and frequency of use, shall be the
27 responsibility of the parent or legal guardian of the qualifying
28 patient.

29 (~~(4) The designated primary caregiver shall:~~

30 ~~(a) Meet all criteria for status as a primary caregiver to a~~
31 ~~qualifying patient;~~

32 ~~(b) Possess, in combination with and as an agent for the qualifying~~
33 ~~patient, no more marijuana than is necessary for the patient's~~
34 ~~personal, medical use, not exceeding the amount necessary for a sixty-~~
35 ~~day supply;~~

36 ~~(c) Present a copy of the qualifying patient's valid documentation~~
37 ~~required by this chapter, as well as evidence of designation to act as~~

1 ~~primary caregiver by the patient, to any law enforcement official~~
2 ~~requesting such information;~~

3 ~~(d) Be prohibited from consuming marijuana obtained for the~~
4 ~~personal, medical use of the patient for whom the individual is acting~~
5 ~~as primary caregiver; and~~

6 ~~(e) Be the primary caregiver to only one patient at any one time.)~~

7 **Sec. 6.** RCW 69.51A.060 and 1999 c 2 s 8 are each amended to read
8 as follows:

9 (1) It shall be a misdemeanor to use or display medical marijuana
10 in a manner or place which is open to the view of the general public.

11 (2) Nothing in this chapter requires any health insurance provider
12 to be liable for any claim for reimbursement for the medical use of
13 marijuana.

14 (3) Nothing in this chapter requires any physician to authorize the
15 use of medical marijuana for a patient.

16 (4) Nothing in this chapter requires any accommodation of any on-
17 site medical use of marijuana in any place of employment, in any school
18 bus or on any school grounds, ~~((or))~~ in any youth center, in any
19 correctional facility, or smoking medical marijuana in any public place
20 as that term is defined in RCW 70.160.020.

21 (5) It is a class C felony to fraudulently produce any record
22 purporting to be, or tamper with the content of any record for the
23 purpose of having it accepted as, valid documentation under RCW
24 69.51A.010~~((+5))~~ (6)(a).

25 (6) No person shall be entitled to claim the affirmative defense
26 provided in RCW 69.51A.040 for engaging in the medical use of marijuana
27 in a way that endangers the health or well-being of any person through
28 the use of a motorized vehicle on a street, road, or highway.

29 **Sec. 7.** RCW 69.51A.070 and 1999 c 2 s 9 are each amended to read
30 as follows:

31 The Washington state medical quality assurance ~~((board~~
32 ~~[commission]))~~ commission in consultation with the board of osteopathic
33 medicine and surgery, or other appropriate agency as designated by the
34 governor, shall accept for consideration petitions submitted ~~((by~~
35 ~~physicians or patients))~~ to add terminal or debilitating conditions to
36 those included in this chapter. In considering such petitions, the

1 Washington state medical quality assurance ((~~board~~[~~commission~~]))
2 commission in consultation with the board of osteopathic medicine and
3 surgery shall include public notice of, and an opportunity to comment
4 in a public hearing upon, such petitions. The Washington state medical
5 quality assurance ((~~board~~[~~commission~~])) commission in consultation
6 with the board of osteopathic medicine and surgery shall, after
7 hearing, approve or deny such petitions within one hundred eighty days
8 of submission. The approval or denial of such a petition shall be
9 considered a final agency action, subject to judicial review.

10 NEW SECTION. Sec. 8. A new section is added to chapter 69.51A RCW
11 to read as follows:

12 (1) By July 1, 2008, the department of health shall adopt rules
13 defining the quantity of marijuana that could reasonably be presumed to
14 be a sixty-day supply for qualifying patients; this presumption may be
15 overcome with evidence of a qualifying patient's necessary medical use.

16 (2) As used in this chapter, "sixty-day supply" means that amount
17 of marijuana that qualifying patients would reasonably be expected to
18 need over a period of sixty days for their personal medical use.
19 During the rule-making process, the department shall make a good faith
20 effort to include all stakeholders identified in the rule-making
21 analysis as being impacted by the rule.

22 (3) The department of health shall gather information from medical
23 and scientific literature, consulting with experts and the public, and
24 reviewing the best practices of other states regarding access to an
25 adequate, safe, consistent, and secure source, including alternative
26 distribution systems, of medical marijuana for qualifying patients.
27 The department shall report its findings to the legislature by July 1,
28 2008.

--- END ---

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	No. 81210-1
v.)	
)	En Banc
JASON LEE FRY,)	
)	Filed January 21, 2010
Petitioner.)	
_____)	

J.M. JOHNSON, J.—Two police officers were informed of a marijuana growing operation at the residence of Jason and Tina Fry. When the officers approached the home, the smell of burning marijuana was apparent. Jason Fry did not consent to a search, and Tina Fry presented a document purporting to be authorization for medical marijuana. The officers obtained a telephonic search warrant, entered the Frys’ home, and seized over two pounds of marijuana.

At trial, Jason Fry (Fry) argued the marijuana evidence should have been suppressed because presentation of a medical marijuana authorization automatically negates probable cause. The judge denied the motion to suppress and also declined to allow Fry to present a compassionate use defense on other grounds. Fry appealed both rulings.

We affirm the Court of Appeals, which upheld the trial court's decision to allow the evidence seized at the Frys' home pursuant to a warrant and declined to allow Fry to claim the compassionate use defense at trial.

Facts and Procedural History

On December 20, 2004, Stevens County Sheriff Sergeant Dan Anderson and Deputy Bill Bitton (officers) went to the residence of Jason and Tina Fry. The officers had received information there was a marijuana growing operation there.

The officers walked up to the front porch and smelled the scent of burning marijuana. Jason Fry opened the door, at which time the officers noticed a much stronger odor of marijuana. Fry told the officers he had a legal prescription for marijuana and told the officers to leave absent a search warrant. Tina Fry gave the officers documents entitled "medical marijuana

authorization.” The authorization listed Fry’s qualifying condition as “severe anxiety, rage, & depression related to childhood.” Clerk’s Papers (CP) at 20-23.

The officers obtained a telephonic search warrant and found several containers with marijuana, growing marijuana plants, growing equipment, paraphernalia, and scales in the Frys’ home. The marijuana was found to weigh 911 grams (more than 2 pounds).

Prior to trial, Fry made a motion to suppress the evidence seized by the officers pursuant to the search warrant. The motion also indicated Fry would assert the affirmative defense of medical marijuana authorization (compassionate use defense) pursuant to former RCW 69.51A.040 (1999).

After hearing arguments, the superior court judge denied Fry’s motion to suppress. The court concluded the officers demonstrated probable cause to search the Frys’ home based on the strong odor of marijuana and other facts described in the telephonic affidavit. The court also concluded that Fry did not qualify for the compassionate use defense because he did not have a qualifying condition.¹

¹ Because the court found Fry was not a “qualifying patient,” it declined to reach the State’s other arguments. The State also argued Fry would not qualify because the amount of marijuana in his possession, over 2 pounds, exceeded the 60-day supply the statute

After a stipulated facts bench trial, Fry was convicted of possession of more than 40 grams of marijuana. The court sentenced him to 30 days of total confinement, converted to 240 hours of community service. Fry appealed, and Division Three of the Court of Appeals held that Fry’s production of a document purporting to be a marijuana use authorization did not prohibit the search of Fry’s home by police officers who had probable cause and obtained a warrant. *State v. Fry*, 142 Wn. App. 456, 461, 174 P.3d 1258 (2008). The Court of Appeals also agreed with the trial court that Fry was not a “qualifying patient” and therefore was not able to claim the affirmative defense for medical marijuana use. *Id.* at 462-63. Fry appealed the decision, and we granted review. *State v. Fry*, 164 Wn.2d 1002, 190 P.3d 55 (2008).

Issues

1. Whether a telephonic search warrant was supported by probable cause when police officers were informed that marijuana was being grown at a certain residence, the officers smelled marijuana upon arriving, but the defendant provided a medical authorization form for marijuana
2. Whether the trial court erred in disallowing Fry’s medical marijuana defense

allowed. CP at 103.

Analysis

- A. Whether a telephonic search warrant was supported by probable cause when police officers were informed that marijuana was being grown at a certain residence, the officers smelled marijuana upon arriving, but the defendant provided a medical authorization form for marijuana

Fry argues the marijuana evidence seized by the officers should have been suppressed. We review a trial court's conclusion of law pertaining to the suppression of evidence de novo. *State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008) (quoting *State v. Carneh*, 153 Wn.2d 274, 281, 103 P.3d 743 (2004)). As the findings of fact in this case were stipulated and uncontested, they are verities on appeal. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (citing *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003)).

The warrant clause of the Fourth Amendment to the United States Constitution and article I, section 7 of our own constitution requires that a search warrant be issued upon a determination of probable cause. *State v. Vickers*, 148 Wn.2d 91, 108, 59 P.3d 58 (2002).² “The probable cause requirement is a fact-based determination that represents a compromise

² Article I, section 7 provides greater privacy protection than the Fourth Amendment, and an analysis under *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986) is not necessary. *Vickers*, 148 Wn.2d at 108 n.43.

between the competing interests of enforcing the law and protecting the individual's right to privacy.” *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008) (citing *Brinegar v. United States*, 338 U.S. 160, 176, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949)). “Probable cause exists where there are facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched.” *State v. Maddox*, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004) (citing *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999)). “It is only the probability of criminal activity, not a prima facie showing of it, that governs probable cause.” *Maddox*, 152 Wn.2d at 505.

There is no contention that the facts, including the information and smell of marijuana, do not support a finding of probable cause to search the Frys' residence.³ However, Fry contends the probable cause was negated once he produced the authorization. Although there was a later dispute over the validity of the authorization, there is no indication in the record that the

³ See, e.g., *State v. Olson*, 73 Wn. App. 348, 356, 869 P.2d 110 (1994) (“When an officer who is trained and experienced in marijuana detection actually detects the odor of marijuana, this by itself provides sufficient evidence to constitute probable cause justifying a search.”) (citing *State v. Huff*, 64 Wn. App. 641, 647-48, 826 P.2d 698 (1992)).

officers or the magistrate questioned the validity at the time the search warrant was issued. Nevertheless, the officers' search and arrest were supported by probable cause, and a claimed authorization form does not negate probable cause.

Former chapter 69.51A RCW (1999) (the Act)

By passing Initiative 692 (I-692), the people of Washington intended that

[q]ualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana.

Former RCW 69.51A.005 (1999). Additionally,

[i]f charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated primary caregiver who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

Former RCW 69.51A.040(1) (emphasis added). Based on I-692 and the derivative statute, we have recognized that Washington voters created a compassionate use defense against marijuana charges. *See State v. Tracy*,

158 Wn.2d 683, 691, 147 P.3d 559 (2006). An affirmative defense admits the defendant committed a criminal act but pleads an excuse for doing so.

State v. Votava, 149 Wn.2d 178, 187-88, 66 P.3d 1050 (2003) (citing *State v. Riker*, 123 Wn.2d 351, 367-68, 869 P.2d 43 (1994)). The defendant must prove an affirmative defense by a preponderance of the evidence. *State v. Frost*, 160 Wn.2d 765, 773, 161 P.3d 361 (2007). An affirmative defense does not negate any elements of the charged crime. *Id.*

Possession of marijuana, even in small amounts, is still a crime in the state of Washington. *See* RCW 69.50.4014. A police officer would have probable cause to believe Fry committed a crime when the officer smelled marijuana emanating from the Frys' residence. Fry presented the officer with documentation purporting to authorize his use of marijuana. Nevertheless, the authorization only created a potential affirmative defense that would excuse the criminal act. The authorization does not, however, result in making the act of possessing and using marijuana noncriminal or negate any elements of the charged offense. Therefore, based on the information of a marijuana growing operation and the strong odor of marijuana when the officers approached the Frys' home, a reasonable inference was established

that criminal activity was taking place in the Frys' residence. Therefore, the officers had probable cause and the search warrant was properly obtained.

This conclusion is supported by *McBride v. Walla Walla County*, 95 Wn. App. 33, 975 P.2d 1029, 990 P.2d 967 (1999). In *McBride*, a police officer arrested McBride for hitting his son. The officer had substantial facts and information to indicate McBride acted in self-defense. Nevertheless, the officer arrested McBride as mandated by the domestic violence section in former RCW 10.31.100(2)(b) (1996).

Like the compassionate use defense, self-defense is an affirmative defense. See *City of Kennewick v. Day*, 142 Wn.2d 1, 10, 11 P.3d 304 (2000). McBride argued it was the officer's duty to evaluate the self-defense claim and determine whether it negated the existence of probable cause to arrest him. *McBride*, 95 Wn. App. at 39. The court concluded, "[t]he officer is not judge or jury; he does not decide if the legal standard for self-defense is met." *Id.* at 40. The court determined the affirmative defense "did not vitiate probable cause." *Id.*

Fry attempts to distinguish *McBride*. He notes that the officers in that case were required to arrest an individual involved in a domestic violence

dispute. There was no statutory requirement compelling the officers to search Fry's residence and seize the marijuana. However, probable cause is not created or negated by statutory mandate to search or arrest (or lack thereof). In most cases, including the one before us, officers have discretion as to whether they will conduct a search or make an arrest once they have probable cause. However, this discretion has no impact on whether probable cause exists.

Under the Act, a person “charged with a violation of state law relating to marijuana . . . will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter.” Former RCW 69.51A.040(1). One of the requirements is that a qualifying patient “[p]resent his or her valid documentation to any law enforcement official who questions the patient regarding his or her medical use of marijuana” (presentment requirement). Former RCW 69.51A.040(2)(c).

An amici brief⁴ calls our attention to the “presentment” requirement in the Act. It is argued that if the presentment requirement is to have meaning,

⁴ Washington Association of Criminal Defense Lawyers and American Civil Liberties Union of Washington.

presentation of a patient's authorization must establish lawful possession of marijuana, and thereby the absence of criminal activity that would provide probable cause for a search or seizure. *Amici Br.* at 7-8.

The presentment requirement must be read in context. It is only triggered when someone is "charged with a violation." Former RCW 69.51A.040(1). A person who meets the presentment requirement (and all other requirements) will "be deemed to have established an affirmative defense." *Id.* Additionally, the requirements, taken together, do not indicate that the Act created more than an affirmative defense. One of the other requirements mandates that the charged individual "[p]ossess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply." Former RCW 69.51A.040(2)(b). It would be impossible to ascertain whether an individual possesses an excessive amount of marijuana without a search.

Instead, the presentment requirement facilitates an officer's decision of whether to use his or her discretion and seize the marijuana and/or arrest the possessor. Once the officer has searched the individual and established that the individual is possessing marijuana in compliance with the Act (i.e.,

appropriate documentation, limited supply, etc.) the officer would then have sufficient facts to determine whether an arrest is warranted. This view is supported by the 2007 amendment to RCW 69.51A.040. The current version reads, “[i]f a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana.” RCW 69.51A.040(1). It is difficult to imagine how a law enforcement officer, having been presented with a medical marijuana authorization, would be able to determine that the marijuana is otherwise being lawfully possessed (and take a sample) without some kind of search.

I-692 did not legalize marijuana, but rather provided an authorized user with an affirmative defense if the user shows compliance with the requirements for medical marijuana possession. *See* former RCW 69.51A.005, .040. As an affirmative defense, the compassionate use defense does not eliminate probable cause where a trained officer detects the odor of marijuana. A doctor’s authorization does not indicate that the presenter is totally complying with the Act; e.g., the amounts may be excessive. An

affirmative defense does not per se legalize an activity and does not negate probable cause that a crime has been committed. We therefore affirm the Court of Appeals on this issue.

B. Whether the trial court erred in disallowing Fry’s medical marijuana defense

Prior to trial, the State argued Fry was not a “qualifying patient” and could not, therefore, assert the compassionate use defense. The State also argued Fry could not claim the affirmative defense because the amount of marijuana in his possession exceeded a 60-day supply. The trial court concluded Fry was not a “qualifying patient” and declined to reach the State’s other arguments. CP at 102-03. The Court of Appeals agreed with the trial court’s ruling.

Whether the trial court erred in disallowing Fry’s compassionate use defense is a question of law we review de novo. *See Tracy*, 158 Wn.2d at 687. Fry bears the burden of offering sufficient evidence to support the affirmative defense of compassionate use. *Id.* at 689 (citing *State v. Janes*, 121 Wn.2d 220, 236-37, 850 P.2d 495 (1993)). Fry bore the burden of producing at least some evidence that he was a qualified patient who could assert the compassionate use defense. *Id.* (citing *Janes*, 121 Wn.2d at 237).

The intent of the medical marijuana statute was that “[q]ualifying patients *with terminal or debilitating illnesses* who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana.” Former RCW 69.51A.005 (emphasis added).

A “qualifying patient” is a person who:

- (a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;
- (b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;
- (c) Is a resident of the state of Washington at the time of such diagnosis;
- (d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and
- (e) Has been advised by that physician that they may benefit from the medical use of marijuana.

Former RCW 69.51A.010(3) (1999). The State argues Fry is not a qualifying patient under the Act because Fry has not been diagnosed as having a terminal or debilitating medical condition under former RCW 69.51A.010(3)(b). Fry’s doctor listed “severe anxiety, rage, & depression related to childhood” as the debilitating medical condition qualifying Fry to use medical marijuana. CP at 20-23.⁵ These conditions did not qualify

⁵ Fry’s physical examination lists other ailments such as hearing loss, low back pain and a

under I-692 as enacted.

In 2007, after the search and seizure in this case, the legislature revised the medical marijuana statute to include additional terminal or debilitating medical conditions that would qualify under the Act. RCW 69.51A.010(4). Fry's conditions of severe anxiety and rage are not included in the list of qualifying conditions, even as amended. In 2004, the State of Washington Department of Health Medical Quality Assurance Commission issued a final order denying a petition to include depression and severe anxiety in the list of "terminal or debilitating medical conditions" under RCW 69.51A.010(4). Final Order on Pet., *In re Condrey*, No. 04-08-A-2002MD (Wash. Med. Quality Assurance Comm'n Nov. 19, 2004).

Fry did not actually have a terminal or debilitating medical condition as provided in the Act. The stated intent of the statute was to allow a qualifying patient with a terminal or debilitating illness to be found not guilty of marijuana possession under certain circumstances. Former RCW 69.51A.005. ("The people of Washington state find that . . . [q]ualifying patients *with* terminal or debilitating illnesses . . . shall not be found guilty

scar from being injured by a horse. However, there is no indication that these conditions were considered as a "qualifying condition." There is no indication that these conditions caused "intractable pain" that was "unrelieved by standard medical treatments."

. . . .”). Conversely, the intent was not to excuse a marijuana user without a terminal or debilitating illness from criminal liability. Former RCW 69.51A.005.

In the only case we have decided under the Act, an otherwise qualifying patient received authorization to use medical marijuana from a doctor in California. *Tracy*, 158 Wn.2d at 686. This court interpreted the provision in the Act defining qualifying doctors as “those licensed under Washington law” to require a doctor formally licensed in Washington. *Id.* at 690. The majority opinion concluded that “[s]ince Tracy was not a patient of a qualifying doctor, she is not entitled to assert the defense.” *Id.* The court stated unequivocally that “[o]nly qualifying patients are entitled to the defense under the act.” *Id.* (citing former RCW 69.51A.005).

This court declined to extend the defense to Tracy, who was not in compliance with the statute because the doctor was not authorized to issue the medical marijuana authorization. Similarly, we will not extend the statute to permit an individual *without* a qualifying illness to claim its benefits.

In order to avail himself of the compassionate use defense, Fry must qualify under the Act. Fry does not have one of the listed debilitating

conditions, and therefore does not qualify. We affirm the Court of Appeals decision to not permit Fry to claim the compassionate use defense.

Conclusion

We interpret chapter 69.51A RCW and its affirmative defense to criminal violations as it was enacted by the people and amended by the legislature. According to the language of the statute, and consistent with the intent of I-692, an authorized user of medical marijuana will have an affirmative defense only if he or she shows full compliance with the Act. However, an affirmative defense does not negate probable cause for a search in the case, conducted with a valid warrant.

The officers in this case had probable cause to search Fry's residence and seize the marijuana, which was in excess of two pounds. The trial court correctly decided that Fry could not avail himself of the compassionate use defense because his claimed health conditions did not qualify under the Act. We therefore affirm the Court of Appeals and uphold Fry's judgment and sentence.

AUTHOR:

Justice James M. Johnson

WE CONCUR:

Chief Justice Barbara A. Madsen

Justice Mary E. Fairhurst

Justice Gerry L. Alexander
